

State of Colorado



Bill Owens
Governor

John Zakhem
Board Chair

Kristin F. Rozansky
Board Director

State Personnel Board
633 17th Street, Suite 1320
Denver, Colorado 80202-3604
Phone (303) 866-3300
Fax (303) 866-5038

AGENDA PUBLIC BOARD MEETING September 19, 2006

A public meeting of the State Personnel Board will be held on **Tuesday, September 19, 2006, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Denver, Colorado 80202-3604.** The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by September 13, 2006.

I. REQUESTS FOR RESIDENCY WAIVERS

A. September 1, 2006 Report on Residency Waivers

Reports are informational only; no action is required.

II. PENDING MATTERS

There are no pending matters before the Board this month.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD

There are no Initial Decisions or other Final Orders of the Administrative Law Judges on appeal to the Board this month.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING

A. Darlena J. Clements v. Department of Regulatory Agencies, Division of Insurance, State Personnel Board case number 2007G001.

Complainant, an Administrative Assistant II, employed by the Department of Regulatory Agencies, Division of Insurance, filed a petition for hearing on July 3, 2006, following receipt of an adverse grievance decision. Complainant argues that imposition of the corrective action and needs improvement performance rating was arbitrary and capricious, since DORA failed to provide the facts and circumstances upon which the corrective action and needs improvement performance rating were based. Complainant further argues she was deprived of an opportunity to rebut the allegations upon which corrective action and needs improvement performance rating were based. Complainant asserts her supervisor never informed her of the required number of filings per week, nor

did he take into account the impact of the computer conversion on her data entry. Complainant alleges that the appointing authority's revocation of her flextime is retaliatory for her exercising her right to file a grievance.

Respondent argues that the grievance does not present an issue that falls within the Board's jurisdiction, DORA's actions were reasonable, and the issue regarding the office noise level is moot.

On August 24, 2006, the Administrative Law Judge issued a Preliminary Recommendation recommending that Complainant's petition for hearing be denied.

B. Robert W. Murray v. Department of Corrections, State Personnel Board case number 2006G073.

Complainant, a Correctional Officer I, hired by the Department of Corrections on June 1, 2006, filed a petition for hearing on June 21, 2006, arguing that DOC's termination of his employment was contrary to rule or law. Complainant argues that, while Respondent terminated him for failing to disclose crucial information related to prior employment, his application process effectively ended with the offer of employment, well in advance of his termination from prior employment. In addition, Complainant argues that DOC did not provide him with paperwork, which indicated that he was to report any information about his prior employment once he had accepted the position offered by DOC.

Respondent argues that Complainant was a probationary employee terminated for unsatisfactory performance, Complainant did not allege unlawful discrimination in his appeal or any other statutory or constitutional violation, and, therefore, the Board lacks subject matter jurisdiction to grant Complainant a hearing. In addition, Respondent contends that Complainant violated the requirements of a document he signed, as a component of his background interview, which stated that he was to report any terminations from prior employment to DOC.

On August 30, 2006, the Administrative Law Judge issued a Preliminary Recommendation recommending that Complainant's petition for hearing be denied.

C. Jeff Hotchkiss v. Department of Corrections, State Personnel Board case number 2007G003.

Complainant is a certified employee holding the position of Correctional Officer II ("COII") at San Carlos Correctional Facility ("SCCF"). Complainant is on the eligibility list for promotion to CO III as a locksmith. Gabe Trujillo was also a CO II who was on the locksmith promotional exam list, and who was offered a CO III locksmith position at Colorado Territorial Correctional Facility ("CTCF"). Mr. Trujillo reported for the CTCF position, but ultimately rejected the CTCF job offer because the job included duties not within Mr. Trujillo's expertise and not part of the announcement description. Mr. Trujillo returned to his position at Arkansas Valley Correctional Facility ("AVCF") and, after petitioning, was reinstated to the locksmith promotional eligibility list. Mr. Trujillo was subsequently promoted to the CO III locksmith position at SCCF. Complainant was also referred for the SCCF locksmith position.

Complainant argues that Mr. Trujillo should have been removed from the locksmith promotional eligibility exam list after he rejected the CTCF position, pursuant to Director's Procedure 4-21, which requires mandatory removal from an employment list for "refusal of an appointment or conditions previously indicated as acceptable," Director's Procedure 4-21(B)(3), or "appointed to a position in the class for which the list was established." Director's Procedure 4-21(B)(6). Complainant filed a grievance with SCCF asking for

San Carlos to correct the promotional eligibility list and to reconsider its hiring decision under the revised list.

The only issue raised by Complainant is whether it was proper to allow Mr. Trujillo to remain on the promotional exam list after he had rejected the CTCF position. Respondent asserts that Mr. Trujillo was correctly permitted to remain on the promotional list because he did not reject a job offer that he had previously indicated would be acceptable, and he had not been at CTCF long enough to be appointed to the CO III position at CTCF.

On September 7, 2006, the Administrative Law Judge issued a Preliminary Recommendation recommending that Complainant's petition for hearing be denied.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES

- A. Robert Jayme v. Department of Human Services, Division of Youth Corrections, Lookout Mountain Youth Facility, State Personnel Board case number 2005B131 (August 14, 2006).

Complainant, a safety and security officer, appealed his termination, seeking reinstatement, back pay and benefits, and attorney fees. After hearing, the ALJ found that many of the statements attributed to Complainant, which were used to justify his termination on grounds of violence in the workplace, were not credible, noting that these allegations had not been investigated or corroborated by Respondent, that many of the allegations were made without dates or context, and that the allegations did not surface until after he had angered staff members by reporting an act of suspected child abuse by his unit staff to local social services. The ALJ also found that the failure to inform Complainant of who had made the allegations against him during the 6-10 meeting violated the Board's rule requirements for a pre-disciplinary meeting and that Respondent had failed to prove a violation of its workplace violence policies because much of what Respondent presented was testimony that Complainant had acted in odd or disconcerting ways, or that his actions made the staff uncomfortable or angry, and such information lacked the necessary indication of actual violence or threatening behavior indicative of violence.

In addition, the ALJ found that Complainant's derogatory and sarcastic statements concerning his supervisors constituted multiple acts of insubordination, including his issuance of a memo declaring that he did not intend to follow his supervisor's order to stop using his digital camera and his rejection of a team agreement on how to handle a specific security risk. Finally, the ALJ found that Respondent's violation of the 6-10 procedures and the termination of his employment on unsupported grounds, while usually requiring the remedy of re-instatement of employment, was not viable in this case because Complainant had committed multiple acts of insubordination justifying termination of employment. Instead, the ALJ modified the termination, ordering an award of back pay to Complainant under C.R.S. §24-50-125(2), from the date of termination to the date that he received proper notification of the grounds for termination, finding that the date of proper notification was the first day of hearing. The ALJ did not order Complainant's reinstatement or attorney fees.

VI. REVIEW OF THE MINUTES FROM THE AUGUST 15, 2006 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS AUGUST 15, 2006 PUBLIC MEETING:

- A. William Thomas Little v. Department of Corrections, State Personnel Board case number 2006B013.

The Board voted to grant Complainant's Motion to Dismiss or Strike Respondent's Notice of Appeal of the Decision of the Administrative Law Judge; to remand the matter to the Administrative Law Judge for an evidentiary hearing on the merits; to place a limitation on discovery (i.e., if full discovery on all issues has been conducted, then the hearing shall occur in 30 days; if more discovery is allowed to be conducted, then the hearing shall occur in 60 days); and based on the Board's findings, to deem that the May 25, 2006, Initial Decision of the Administrative Law Judge does not and can not constitute a final agency action or initial decision with a right of appeal as it does not render a final resolution of the matter upon which the Board could issue a Final Agency Order.

- B. John K. Williams v. Regents of the University of Colorado, University of Colorado System Office, Procurement Service Center, State Personnel Board case number 2005B081.

The Board voted to adopt the findings of fact and conclusion of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision.

- C. David Teigen v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2003B127.

The Board voted to adopt the findings of fact in the Order Awarding Attorney Fees and Costs and to adopt the Order Awarding Attorney Fees and Costs.

- D. Matthew P. Valdez v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Service Center, State Personnel Board case number 2005B69.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the petition for hearing.

- E. Carol Denogean v. Department of Human Services, Pueblo Regional Center, Community Living For Developmentally Disabled, State Personnel Board case number 2006G063.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts
- FY2005-2006 Whistleblower Report to the Governor
- Mandate/Order Affirmed in Masse v. Department of Corrections, State Personnel Board case No. 2003B077, Court of Appeals No. 04CA2506

B. OTHER BOARD BUSINESS

- Staff Activities

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

XI. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the August 15, 2006 Executive Session
- C. Other Business

XII. WORKING SESSION

- Discussion of proposals for Business Plan

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NEXT REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.

October 17, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
November 21, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
December 19, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
January 16, 2007	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
February 20, 2007	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
March 20, 2007	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
April 17, 2007	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
May 15, 2007	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
June 19, 2007	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604